



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Application of Pacific Gas and Electric Company and San Diego Gas & Electric Company for approval of Their Separate Emerging Renewable Resource Program.

A.07-07-015
(Filed July 18, 2007)

**OPENING BRIEF OF THE DIVISION OF RATEPAYER
ADVOCATES ON THE APPLICATION OF PACIFIC GAS AND
ELECTRIC COMPANY AND SAN DIEGO GAS AND ELECTRIC
COMPANY FOR APPROVAL OF THEIR SEPARATE EMERGING
RENEWABLE RESOURCE PROGRAM**

I. INTRODUCTION

Pursuant to the schedule set by Administrative Law Judge (ALJ) DeBerry on October 30, 2007, the Division of Ratepayer Advocates (DRA) submits this opening brief on the Application of Pacific Gas and Electric Company (PG&E) and San Diego Gas & Electric Company (SDG&E) for approval of their separate emerging renewable resource program (ERRP).

DRA supports the ERRP upon the specific grounds and conditions stated in this brief¹. These grounds and conditions are as follows:

1) The Commission should define and establish the authority of the Emerging Renewable Resources Coordinating Council ("ERRCC") the

¹ DRA is aware that Southern California Edison (SCE) is preparing an application for its own ERRP program. (Reporter's Transcript of Proceedings ["RT"], October 30, 2007, p. 53-55.) Therefore DRA notes that any support stated in this opening brief is limited to the facts of this case as developed in the parties' responses to questions from the ALJ and DRA. DRA has also chosen to proffer this limited support particularly because of the relatively modest budget these applicants proposed for their ERRPs.

Application proposes to form before the ERRCC is funded;

2) The ERRCC should be positioned to recommend projects presented in the ERRP subject to review and approval by the Energy Division (ED) through the advice letter process.

3) PG&E and SDG&E shareholders should contribute to funds provided by ratepayers.

DRA recognizes the need for the ERRP at this time in California's renewable energy development to meet the goals for the Renewable Portfolio Standards program (RPS) and to help further the state's efforts at reducing green house gases ("GHG") in the long run. Further, DRA believes that ratepayers' contribution to particular projects with limited access to funding at the gap-stage of their development have the potential to reduce costs in the future when the program produces resources in a highly challenged renewable market.

However, DRA believes the conditions set forth above are reasonable because the ERRP requires particular strictures to ensure that the programs achieve their objectives and that shareholders' interests in the ERRP are aligned with the interests of ratepayers.

II. PROCEDURAL CONTEXT

PG&E and SDG&E jointly filed the ERRP Application on July 18, 2007. DRA filed a timely protest on August 20, 2007. A pre-hearing conference (PHC) was held on September 14, 2007. At the PHC, DRA expressed concerns with aspects of the Application and requested some time to discuss the concerns with PG&E and SDG&E in order to determine if hearings would be necessary to resolve the concerns. ALJ DeBerry further outlined a list of potential issues, along the same lines as DRA's concerns, and asked PG&E and SDG&E to provide written answers to a specific list of questions raised by those issues. PG&E and SDG&E responded to ALJ DeBerry's questions on September 24, 2007. Following, these responses, DRA sent a comprehensive data request to PG&E and

SDG&E and further held meetings with them to determine whether a hearing would be necessary in the proceeding. On October 11, 2007, ALJ DeBerry issued a ruling directing PG&E and SDG&E to answer additional questions. PG&E and SDG&E provided their responses to ALJ DeBerry's second set of questions on October 23, 2007.

On October 30, 2007, the Commission held a second PHC. All the parties present at this PHC, including the Independent Energy Producers Association (IEP)², agreed that hearings will not be necessary to resolve the issues in the application. Consequently, ALJ DeBerry ordered that parties may rely on the information from the applicants' responses to his questions and DRA's data requests in their briefs, as though the responses were sworn testimonies. PG&E and SDG&E also agreed to provide sworn declarations, if necessary, stating that their responses to ALJ DeBerry's questions and DRA's data requests were true and correct.

III. THE COMMISSION DECISION SHOULD DEFINE AND ESTABLISH THE AUTHORITY OF THE EMERGING RENEWABLE RESOURCES COORDINATING COUNCIL

The ERRP can only realize the promise of its objectives if the Commission establishes strong oversight conditions for the program and the funds the Commission approves. While PG&E and SDG&E recognize this fact, the model they propose for the ERRP oversight coordination and review is a loosely defined entity known as the ERRCC³, which is based on the Emerging Technologies Coordinating Council (ETCC) in the energy efficiency program⁴.

² The IEP's Brian Cragg entered a full-party appearance the second PHC.

³ *Application of Pacific Gas and Electric Company (U-39-E) And San Diego Gas & Electric Company (U 9042-E) For Approval Of Their Separate Emerging Renewable Resource Programs, ("Application")*, p. App. 1-3, 1-8.

⁴ *Application*, p. App 1-10.

However, the ETCC is not a proper model for the ERRCC. DRA believes that ETCC has not been as effective as it could be in vetting the energy efficiency programs that came before it, and has not functioned well as an advisory group. The ERRCC should be a more effective group. Therefore, DRA proposes that the Commission define the authority for the ERRCC, rather than allow the Council to derive its character from a model most ratepayer advocacy groups want to change. The defining authority DRA proposes for the ERRCC would not alter it very much from the proposal that PG&E and SDG&E presented in this application, but would add an additional review element in the process from identifying a program to the approval of the program by the Commission.

In various sections of the Application, the ERRCC is described as follows:

PG&E and SDG&E will establish an Emerging Renewable Resources Coordinating Council (“ERRCC”), consisting of representatives of PG&E, SDG&E, other California investor-owned utilities (“IOUs”) that elect to implement an ERRP, representatives of the California Energy Commission’s (“CEC”) Public Interest Energy Research (“PIER”), the Energy Division, the Utility Reform Network (“TURN”), and the Division of Ratepayer Advocates. (“DRA”).

PG&E and SDG&E recognize the need for an open, objective process for the public review of projects supported by an innovative program such as the ERRP. Thus, the ERRP proposal includes up-front criteria for ERRP project selection, and projects selected for ERRP-funding will be reviewed with PG&E’s and SDG&E’s respective Procurement Review Groups (“PRG”) and submitted to the Commission for approval through the Tier 1 Advice Letter process. PG&E and SDG&E will report semi-annually on the achievements of their overall ERRP programs as requested by the Commission.⁵

⁵ *Application, p. App. 1-3.*

DRA recommends that ERRP projects be subject to one of the three Tiers of the advice letter process based on the degree to which they meet the ERRCC's approval, as follows. 1) Tier 1: Projects that the ERRCC found acceptable may be approved through this process; 2) Tier 2: Projects that two or more of the ERRCC members would not approve, but was found acceptable by other members of the ERRCC; 3) Tier 3: Projects that all the members of the ERRCC, excluding the IOUs, found unacceptable. This recommendation is not burdensome because it is unlikely that there will be many, if any, cases where the ERRCC and the utility would disagree to the extent that a Tier 3 Advice Letter process may become necessary. Further, the Commission has recently clarified and streamlined the advice letter process to ensure a better understanding of the three tiers, as follows.

In short, we separate advice letters into two broad groups: advice letters disposed of by staff, where approval or rejection is ministerial; and advice letters disposed of by Commission resolution, where approval or rejection requires the exercise of discretion.

...For energy and telecommunications, advice letters submitted for staff disposition are further divided between those that are effective pending disposition," i.e., they may be implemented before approval ("Tier 1"), and those that are effective, and may only be implemented on or after approval ("Tier 2"). Advice letters requiring a Commission resolution go to "Tier 3", under the Energy and Telecommunications Industry Rules.

(Opinion Consolidating Proceedings, Clarifying Rules For Advice Letters Under The Uniform Regulatory Framework, And Adopting Procedures For Detariffing, D.07-09-018, p.84.)

The relief DRA proposes would also require PG&E and SDG&E to submit the semi-annual reports to the ERRCC rather than the Commission for review of the progress and achievements of the overall ERRP before filing a report with the

Commission. In this respect, only a single annual report may be submitted to the Commission on the progress and achievements of the ERRP. Further, in filing the report with the Commission, PG&E and SDG&E must alert the Commission to any reservations the ERRCC had with each particular project, explaining how that reservation was resolved, even if the project was ultimately acceptable to the entire ERRCC panel or approved by the Commission.

As PG&E and SDG&E maintain, the ERRP is a long-term strategy aimed at developing emerging renewable technologies to help replenish and expand the pool of renewable energy supply⁶.

The primary aim of the ERRP is to provide assistance to promising emerging renewable energy opportunities at the Product Introduction/Demonstration phase (Phase 2)⁷ or at the bridge into Commercial Introduction (Phase 3), which is a critical time in which conditions must be satisfied to attract capital to make the technology viable on a commercial scale. Typically, operational feasibility must be successfully demonstrated for the product to obtain financing and other support necessary for full-scale product development and marketing needed for Commercial Introduction. The ERRP will focus on providing resources to move companies, technologies, and resources from product introduction into the demonstration phase of the product development or to transition from Research and Development (Phase 1) into Commercial Introduction (Phase 3). Although there are other programs currently available for renewable technologies, as described in more detail

⁶ *Application* p. A1-1.

⁷ “There are four distinct phases of product development:

- (1) Research and Development;
- (2) Product Introduction/Demonstration;
- (3) Commercial Introduction; and
- (4) Mature Product.

In each of these phases, a company faces different challenges” (*Application*, p App. 1-14.)

below, these programs do not address the need for companies to move from Phase 1 to Phase 3 in development. This gap is where the ERRP is critical.⁸

This description of the ERRP reveal important elements that require a strong ERRCC. First, the ERRP will limit the programs it considers to a specific group or family of resources at a very particular stage in their development. Second the ERRP must make the further determination that the projects considered will “expand” or “replenish” the pool of renewable energy supply rather than duplicate existing efforts. Third, even if the first two elements are met, the ERRP must ensure that the contribution it makes to a particular project would be sufficient to make a logical impact, given its modest budgetary range of \$2 million to \$5 million per project. In this respect, a logical impact would be an enhancement or implementation that has benefits traceable to the contribution from the ERRP in the development or commercialization of the resource. Thus, if a project is at the gap stage and has the potential to “expand” and “replenish” the pool of renewable energy resources, the ERRCC may still recommend that the utility reject the project because it would take far more than the current budget to contribute an amount that would accelerate the development of the resource in any appreciable way attributable to the ERRP funding.

At this time, the ERRP has only identified three projects for review but seeks a budget three times more than the proposed cost of the projects identified. Thus, two thirds of the funding the Commission will approve in this decision will be for programs that have not yet been identified. While PG&E and SDG&E will still submit the programs to the Commission for review when the programs are identified, the development of a factual record and the ability for ratepayers to contest any new issues in the programs should be preserved through the authority DRA proposes for the ERRCC.

⁸ *Application* , p. App 1-14.

IV. THE ERRCC BE POSITIONED TO RECOMMEND PROJECTS PRESENTED FOR ADDITION TO THE ERRP

PG&E and SDG&E also propose that “[t]he ERRCC would meet quarterly, and as needed to, facilitate information-sharing and coordination among its members.”² DRA supports this recommendation. In the course of these quarterly meetings, the ERRCC should question the continuing expenditure of funds on any programs already approved if the funds are not directly tied to the critical purpose for which the ERRP was funded.

DRA is concerned that the description of the commercialization path for some of the proposed projects anticipate large expenditures for “outside services” that may already be funded through the utilities General Rate Cases (“GRC”), and no attempt was made in the Application to distinguish how the funds for these services differ from what the Commission has already approved in the GRC. In response to questions ALJ DeBerry issued on October 11, 2007, PG&E described the commercialization path for the WaveConnect project, in part, as follows:

Stage 1 of the ERRP WaveConnect Projects is expected to be approximately five years in duration, consisting of the three year preliminary permit period, followed by approximately two years of responding to additional data requests related to the FERC license application. ...

If the projects prove feasible during this time, all of the work required to successfully file the project development license applications with FERC will be completed, including detailed feasibility analyses and permitting studies. ... Activities during the preliminary permit period (years 1 to 3) will vary based on the requirements put forth by the relevant agencies, as part of the development license application process, but it is expected that extensive environmental studies will be included.

² *Application*, p. App 1-14

(Response Of Pacific Gas And Electric Company To The Questions Of ALJ DeBerry Issued October 11, 2007, p.12.)

While environmental studies and feasibility analyses may fit more obviously within the ambit of the critical need PG&E and SDG&E described for the ERRP (*Application*, p. App 1-14.), “approximately two years of responding to additional data requests related to the FERC license application” is questionable as a fit.

The Commission should let the ERRCC question the continuing application of funds to legal services and other work that PG&E and SDG&E have, either already been funded for in the GRC or could have provided within their own existing internal divisions. This recommendation is entirely consistent with PG&E’s and SDG&E’s statement that the cost of their internal staff contribution to the ERRP will not be included in any ERRP project budgets¹⁰.

V. PG&E AND SDG&E SHAREHOLDERS SHOULD CONTRIBUTE A SHARE OF ERRP FUNDS BASED ON 33% OF ANY FUNDS PROVIDED BY RATEPAYERS.

DRA supports PG&E’s and SDG&E’s requests for \$30 million and \$15 million to be funded by ratepayers, but only upon the condition that PG&E and SDG&E shareholders make a contribution that is equal to 33% of the amount in addition to the funds provided by ratepayers. The utilities should make this contribution because their shareholders stand to gain significantly from a successful ERRP program as well. DRA derives the proposed percentages (67% - 33%) from the Commission decision adopting the same formula for allocating gains on sale received by certain electric utilities¹¹.

Successful ERRP projects would benefit shareholders in some respects that do not inure to ratepayers. For instance, a successful ERRP project could yield

¹⁰ *Application*, p. App 1-28.

utility owned generation resources that would add to the shareholders return on equity. The reduced costs of future renewable resources and the acceleration of renewable resource development allow utilities to meet their RPS obligations and any new laws increasing the RPS target in the future. Since utilities are currently subject to penalties should they fail to meet the RPS target, the opportunity to avoid such penalties is an added benefit to shareholders alone.¹² In addition to these benefits, the potential resource diversity, GHG reduction, and even public relations opportunity provided by these investment present advantages to shareholders that justify DRA's proposal for shareholder contribution.

In D.06-12-043 the Commission adopted an allocation of gains on sale received by certain utilities as follows: 33% to shareholders, and 67% to ratepayers. The decision concluded that this percentage allocation was roughly proportionate to the assumed risk in most cases. DRA proposes this assumed risk allocation for the ERRP in part to justify any subsequent allocations from a sale of any asset derived from the program. Further, the reasons stated by the Commission in D.06-12-043, which included an attempt to make the allocation less arbitrary, but tied to more rational considerations, all apply to deriving a formula in this proceeding for ratepayers and shareholders to share the costs of the ERRP.

VI. CONCLUSION

For all the foregoing reasons, DRA requests that the Commission adopt its recommendations in this brief.

(continued from previous page)

¹¹ Decision 06-12-043.

¹² CITATION?

Respectfully submitted,

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November 19, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **OPENING BRIEF OF THE DIVISION OF RATEPAYER ADVOCATES ON THE APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY AND SAN DIEGO GAS AND ELECTRIC COMPANY FOR APPROVAL OF THEIR SEPARATE EMERGING RENEWABLE RESOURCE PROGRAM** in **A.07-07-015** by using the following service:

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Executed on November 19, 2007 at San Francisco, California.

/s/ ALBERT HILL

Albert Hill

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